REMARKS

> A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior reverence ... in as complete detail as contained in the ... claim. *MPEP* 2131 (citations omitted).

Independent claim 1 is rejected under 35 USC 102 for anticipation by the cited Maimets patent according to repetition of the Action of March 15, 2005, pages 4 - 6 Paragraph 7, for disclosing "... a layer of foamed plastic (reference number 19, Figure 8) between and adhered to the base layer and he innermost layer" (reference number 1, Figure 8). However, claim 1 requires the layer of foamed plastic between the base layer and the innermost layer to "itself" be adhered to the innermost layer and the patent specifically discloses instead that "... the gasket 19 is affixed by a contact adhesive or by some appropriate mechanical means ... to the outer surface 2 of the sleeve 1" (column 16, lines 21 - 23). As contact adhesive or mechanical means are not expressly or inherently the foamed plastic layer "itself," the rejection fails.

Adding grout to the gasket does not change this. As illustrated in figure 10 of the patent, "... one or more elastic bands 29 are then placed around the gasket 19 to retain the gasket on the sleeve 1" (column 17, lines 12 - 14). While the use of elastic bands "... is optional ..." it is not express or inherent disclosure of foamed plastic itself adhering, as claimed.

The Action finds "adhesion plastic" at column 15, lines 34 - 43 and 59 - 68, of the patent, but these lines recite only "... material that can absorb a significant quantity of grout." Absorbing grout is not adhesion, as claimed. Instead, "... the primary purpose of the gasket [19] is that of a grout carrier medium" (column 15, lines 63 - 64).

The Action gives little weight to the additionally claimed limitation of the adhesion now by being simultaneously extruded, which is contrary to the structural limitation found in *MPEP* 2113 for "interbonded by interfusion." Rejections cannot stand against the Manual.

The Applicant also presented documentary evidence of the structural distinction of the claimed simultaneous extrusion by Nield US patent 4,015,033, which can no longer be ignored as now made of record.

Independent claim 1 is also rejected under 35 USC 102 for anticipation by the cited Maimets patent according to repetition of the Action of August 2, 2005, pages 3 - 4 Paragraph 4, because "... the foamed plastic gasket, which includes the grout ... has adhesive properties and forms a bond with the base layer and innermost layer without the need for an additional adhesive layer."

> Unsupported speculation as to the qualities of that apparatus can form no basis for rejection of claim .... *In re Glass*, 176 USPQ 529, 532 (CCPA 1973).

The corresponding rejections of independent claims 15 and 22 are correspondingly traversed.

Independent claim 1 is also rejected under 35 USC 102 for anticipation by the newly cited Doucet patent. This is traversed on the basis of the claimed base and innermost layers "... that have poor adhesion to each other ...." In the Doucet patent, a single material 2 forms the base and innermost layers 8, 9 that, therefore, cannot have the claimed poor adhesion to each other, even making allowance for the relativity of "poor."

The corresponding rejections of independent claims 15 and 22 are correspondingly traversed.

The assertion that the base and innermost layers have poor adhesion, because separated, is incorrect, because adhesion and not adherence is claimed, is not supported by the lexicography of the specification, and is contrary to the Action itself with reference to the Nishidome, et al. WO patent publication also newly cited where the poor adhesion is "... because the base layer is a metal and the inner layer is a plastic." Nevertheless, it is traversed in claim 1 by specifying that the materials have the poor adhesion.

Independent claim 1 is also rejected under 35 USC 102 for anticipation by the newly cited Nishidome, et al. WO publication for structural similarities excluding the claimed simultaneous extrusion as a mere process limitation. However, such exclusion was traversed by the facts of the Nield patent previously presented and now cited.

> Simultaneous extrusion is preferred because physical bonding between the discrete layers is generally better .... (column 2, lines 14 - 16).

Physical bonding is structure.

> The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art ... where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, ... (CCPA 1979) (holding "interbonded by interfusion" to limit structure .... *MPEP* 2113

The rejection shifted the burden of showing the structural difference of the claimed simultaneous extrusion to the applicant, but the applicant had already met this burden by providing the Nield patent October 10, 2005. The burden is, therefore, back on the Action and not met by the silence thereof.

The assertion in the Action that the structure provided is only "... that the famed adhesion plastic tie layer is adhered directly to the innermost and base layers" is incorrect. The structure of the plastic and foamed plastic innermost and tie layers is defined instead by

the fact of their physical bonding structure from simultaneous extrusion as established by the Nield patent.

The corresponding rejections of independent claims 15 and 22 are correspondingly traversed.

The allowability of independent claims 1, 15 and 22 established by their structural differences, including their physical bonding of simultaneous extrusion that remains an unrebutted fact from the Nield patent, permits the allowance of the other claims.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,

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